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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,262	01/29/2002	Christopher John Frogley	P2759	4074

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EXAMINER

GELLNER, JEFFREY L

ART UNIT PAPER NUMBER

3643

DATE MAILED: 09/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/058,262

Applicant(s)

FROGLEY, CHRISTOPHER JOHN

Examiner

Jeffrey L. Gellner

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-14 is/are pending in the application.
- 4a) Of the above claim(s) 9-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-8 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 3-8 and 14 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The “aqueous dispersion which is dispersed throughout the sphagnum moss” which is critical or essential to the practice of the invention (since argued by Applicant at paper no. 10, Remarks at page 8 2nd para.), but not included in the claim(s) and is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). Claim 1 (at line 2) and the specification (at the 1st replacement paragraph at lines 2 and 3) both disclose a binding material “dispersed through” the sphagnum moss but Applicant argues that the binding material is “dispersed throughout” the sphagnum moss.

Claim Rejections - 35 USC §103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, and 5-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Edwards (US 3,543,438) in view of JP1-157315.

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As to Claims 1 and 3, Edwards discloses a growing medium (abstract) comprising a self-supporting block (Figs. 4 and 5; col. 4 lines 32-47) formed from sphagnum moss (col. 3 line 1) bounded together by a binding material (“adhesive means” of col. 3 lines 15-17) dispersed through (from “penetrate through the thickness of the entire assembly” col. 3 lines 20-24), the binding material being a compatible adhesive (inherent in col. 4 lines 32-39). Not disclosed is the adhesive being ethylene vinyl acetate. JP1-157315, however, discloses the use of ethylene vinyl acetate as an adhesive with sphagnum (abstract written in English). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the growing medium of Edwards by using ethylene vinyl acetate as an adhesive as disclosed by JP1-157315 depending upon price and availability of adhesives.

As to Claims 5 and 8 (when dependent upon Claim 5), Edwards as modified by JP1-157315 further discloses fibrous material dispersed through the sphagnum moss (“wood shavings” of col. 3 lines 1-3; shredded bark defined as within the ambit of wood shavings).

As to Claims 6 and 7, Edwards as modified by JP1-157315 further discloses a fibrous material exterior coating (“cheese cloth fabric” of col. 2 line 67).

Claim 8 (when dependent upon Claim 7) is rejected under 35 U.S.C. §103(a) as being unpatentable over Edwards (US 3,543,438) in view of JP1-157315.

As to Claim 8, the limitations of Claim 7 are disclosed as described above. Not disclosed is the outer exterior shredded waste paper. However, because cheese cloth and shredded waste paper were art-recognized equivalents at the time of the invention in those growing media where the exact material used in the exterior coating was immaterial, it would have been obvious to one

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of ordinary skill in the art at the time of the invention to substitute shredded waste paper for cheese cloth in the growing medium of Edwards as modified JP1-157315.

Claim 4 is rejected under 35 U.S.C. §103(a) as being unpatentable over Edwards (US 3,543,438) in view of JP1-157315 in further view of Ball (US 4,414,776).

As to Claim 1, are disclosed as described above. Not disclosed is the binding material a botanical gum. Ball, however, discloses the use of several botanical gums (col. 3 lines 1-2) in a seed mat environment (abstract). Because EVA and botanical gum resins were art-recognized equivalents (see Ball at col. 3. line 6) at the time of the invention in growing media where it is immaterial as to the exact binding material, one of ordinary skill in the art at the time of invention would have found it obvious to substitute botanical gums for EVA as disclosed by Ball in the growing medium of Edwards as modified by JP1-157315.

Claim 14 is rejected under 35 U.S.C. §103(a) as being unpatentable over Edwards (US 3,543,438) in view of JP1-157315 in view of Langezaal et al. (US 5,218,783).

As to Claim 14, the limitations of Claim 1-7 are disclosed as described above. Not disclosed is the growing medium in combination with a support tray, the support tray with one or more apertures adapted to receive the growing medium and being surrounded by solid white walls, the top and base of the apertures being open. Langezaal et al., however, discloses a support tray (5 of Fig. 2) in combination with the growing medium (11 of Fig. 2); the support tray with one or more apertures (9 of Fig. 2) adapted to receive the growing medium (Fig. 2) and being surrounded by solid white walls (walls solid white in Fig. 2), the top and base of the

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apertures being open, the tray with solid sidewalls and the top and bottom open (see Fig. 2). It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the growing medium of Edwards as modified by JP1-157315 by using in combination with the support tray of Langezaal et al. so as to provide an easy means to carry a plurality of growing media at one time.

Response to Arguments

Applicant's arguments entered 23 June 2003 have been fully considered but they are not persuasive. Applicant's argument for all claims is essentially that Edwards does not disclose the adhesive, or binding material, dispersed throughout the sphagnum moss (Remarks page 8, 2nd para.).

The language of Claim 1 is that the binding material is "dispersed through" the sphagnum moss (at lines 2 and 3). The pertinent definition of dispersed is "to cause to become spread widely" (Merriam-Webster's Collegiate Dictionary at page 335). Examiner considers the adhesive, binding material, to be dispersed in the areas where it is sprayed as disclosed by Edwards at col. 3 lines 15-23.

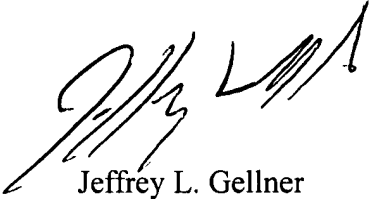
Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

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If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner